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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 223

VIRGINIA S. BLOCK,

Petitioner,

v.

LOUIS T. BLOCK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Virginia S. Block, prays that a Writ of Certiorari issue to review the order and judgment entered in the above-entitled case by the Supreme Court of Ohio on April 13, 1955.

OPINIONS BELOW

The opinion of the Supreme Court of Ohio is reported in 163 Ohio St. 230 (advance sheets, Ohio Bar, issue of April 25, 1955). The opinion of the Court of Appeals is not reported, but is attached hereto as an appendix. The memorandum opinion of the Court of Common Pleas of Hamilton County, Ohio, not reported, and its judgment entry, are attached hereto in the appendix.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on April 13, 1955. The jurisdiction of this Court is invoked under the provisions of *28 U. S. Code, Section 1257 (3)*. The Courts of Ohio misapplied the provisions of *Section I, Article IV*, of the Constitution of the United States, and *28 U. S. Code, Section 1738*, refusing to modify the decree of the Cook County Circuit Court of the State of Illinois, which had awarded petitioner a divorce and adopted a settlement agreement executed by the parties, even though recognizing that a manifest fraud had been perpetrated upon petitioner by respondent. The Ohio Courts below held that the full faith and credit clause of the United States Constitution precluded them from modifying the Illinois decree for any fraud other than fraud going to the jurisdiction over the parties or the subject matter. Petitioner states that this holding is contrary to the principle announced in *Marshall* v. *Holmes*, 141 U. S. 589, and *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238. Petitioner states that by reason of this erroneous application of the full faith and credit clause of the United States Constitution, a clear constitutional question is presented under *28 U. S. Code, Section 1257(3)*.

QUESTIONS PRESENTED

1. The main question presented is whether an Ohio Court of general jurisdiction, sitting as a court of equity, is precluded by the full faith and credit clause of the United States Constitution from modifying a property settlement agreement approved by an Illinois divorce decree, where such settlement was procured by respondent's fraud in misrepresenting and concealing his assets.

The Ohio Courts held that under *Article IV, Section I* of the Constitution of the United States, they were compelled to give full faith and credit to the Illinois decree,

although the facts (which were admitted, for all purposes in this action) set forth a manifestly unconscionable fraud upon petitioner in the misrepresentation and concealment by respondent of his true worth prior to and during the execution of the property settlement agreement. If the Ohio decision is permitted to stand, then one spouse, by fleeing the state which rendered the divorce decree and by avoiding subsequent service therein, could prevent any court in the country from relieving the innocent party from the effect of an unconscionable fraud.

It is the contention of the Petitioner that the full faith and credit provisions were never intended, and never have been interpreted by this Court to preclude the modification of a decree or judgment of a sister state when such decree or judgment was procured by fraud of the type here present.

The decisions of the Ohio Courts in this cause are in complete conflict with the decisions of the United States Supreme Court in *McDaniel v. Traylor,* 196 U. S. 415, 424, and *Simon* v. *Southern Ry.,* 236 U. S. 115, 122; and are contrary to the equitable principles announced and reiterated by this court in *United States* v. *Throckmorton,* 98 U. S. 61, *Marshall* v. *Holmes,* 141 U. S. 589, and *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.,* 322 U. S. 238; and are clearly erroneous.

2. Also involved in this problem is the question of the present state of the equitable doctrine of avoidance of judgments by reason of fraud. Since the conflicting opinions in *United States* v. *Throckmorton,* 98 U. S. 61, and *Marshall* v. *Holmes,* 141 U. S. 589, courts throughout the United States have been at a loss as to the equitable rule governing the power of one court to avoid judgments and decrees of another court because of extrinsic or intrinsic fraud. This is illustrated by the attempt of the Court of Appeals for the 7th Circuit to certify in *Graver* v. *Faurot,*

162 U. S. 435. See, *Publicker* v. *Shallcross,* 106 F.2d 949, 951, CCA-3, 1939. As a result of this absence of a clear rule, the supposed "key" words *"extrinsic"* and *"intrinsic"* have lost all logical meaning; and in divorce actions, particularly, we are faced with lower court decisions variously describing as "extrinsic" or "intrinsic," *identical* facts of misrepresentation and concealment of assets during settlement negotiations. It is earnestly urged, therefore, that the rule should be clarified and definitively announced by this Court, in order to bring such confusion to an end.

3. While this Court has established, as an exception to the full faith and credit rule, the general equitable doctrine of relieving an injured party from the consequences of a judgment or decree procured through manifest fraud, the Supreme Court of the United States has never passed on the precise factual situation here presented, although the opportunity to have the question decided has been sought. *Cohen* v. *Randall,* 137 F.2d 441, cert. denied, 320 U. S. 796; *Griffith* v. *Bank of New York,* 147 F.2d 899, cert. denied, 325 U. S. 874; *United States Nat. Bank of Denver* v. *Bartges,* 120 Colo. 317, 210 P.2d 600, cert. denied, 338 U. S. 955.

It is earnestly submitted that an interpretation of the full faith and credit clause, as applied to these facts, is badly needed. Accordingly, a decision to the effect that "full faith and credit" does not apply to a settlement agreement procured by unconscionable fraud and incorporated in a divorce decree, would be of lasting benefit.

4. Lastly, it is obvious from the record that the Ohio courts misunderstood the operation of the full faith and credit clause, by not according the Illinois decree only that degree of faith and credit which would have been accorded the decree in Illinois, if under attack there. The Ohio courts did not even consider what Illinois would have done

under the circumstances, although under Illinois law such an attack would be permitted. The result was to accord the Illinois decree *greater* faith and credit than it would have been given in Illinois itself. Such rulings obviously were erroneous in the light of the positive pronouncements of this Court in *Cole* v. *Cunningham*, 133 U. S. 107, at pp. 111-112, *Morris* v. *Jones*, 329 U. S. 545, and *Halvey* v. *Halvey*, 330 U. S. 610.

STATUTES INVOLVED

UNITED STATES

The first section of *Article IV* of the Constitution of the United States is primarily involved:

> "Section 1. Full Faith and Credit.—Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The statute implementing such section is found in *28 U. S. Code, Section 1738:*

> "The Acts of the legislature of any State, Territory or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto. . . ."
>
> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT OF CASE

Virginia S. Block and Louis T. Block were married in Chicago, Illinois, on February 21, 1941. Friction developed

between the Blocks in the fall of 1945. During the property settlement negotiations prior to the institution of divorce proceedings, Mr. Block and his attorneys disclosed to Mrs. Block and her attorneys that substantially all his assets, to-wit: $970,000.00, had been placed in an irrevocable trust in Cincinnati, Ohio, in October, 1945, with the trust income of $25,000.00 per annum for life payable to Mr. Block, and on his death the corpus to go to a charitable foundation founded by his father. This trust was represented to be valid in all respects, and entered into bona fide solely for the purpose of assuring Mr. Block a risk-free income.

Mr. Block offered to pay Mrs. Block the sum of $110,000.00 in full settlement of all her claims to alimony and maintenance; and, relying upon the representations made as to the validity of the trust, and that the corpus of the trust was not available for settlement purposes, Mrs. Block accepted this offer on February 27, 1946. Mrs. Block had meanwhile on February 19, 1946, filed her Complaint for Divorce in Cook County, Illinois. On February 28, 1946, Mr. Block filed his appearance and answer in said cause, and on March 12, 1946, a decree for divorce was entered, embodying the property settlement.

Thereafter on January 24, 1950, Mr. Block filed his Petition in Hamilton County, Ohio, against the trustee of his "irrevocable" trust, alleging that said trust had been entered into because of the undue influence of his father, and praying that said trust be held void. The Court found, from the evidence offered by Mr. Block and his father, that there was indeed undue influence, and ordered a reconveyance by the Trustee to Mr. Block.

On April 13, 1951, upon discovery of the decree setting aside the trust, Mrs. Block filed her Complaint in the nature of a Bill of Review in the Superior Court of Cook County, Illinois, attempting service by publication on Mr. Block, and alleging that this trust had been created during their

marriage solely in order to create a fictitious straitened financial condition for Mr. Block, and thus to enable him to obtain an unconscionable advantage in dealing with Mrs. Block in the property settlement negotiations; that Mr. Block knew of the undue influence and coercion of his father from the date he signed the trust, and had been advised by his attorney that the "irrevocable" trust could be set aside at any time on this ground, yet had not advised Mrs. Block of this fact, but, on the contrary, *had represented that the trust was bona fide.* That because of this fraud, the divorce decree should be reformed to provide her with the equitable rights as to alimony and maintenance from the corpus which had been reconveyed to Mr. Block.

This cause was removed by Mr. Block to the United States District Court, Chicago, Illinois, because of diversity of citizenship, Mr. Block being a resident of Cincinnati, Ohio, and then dismissed (in the absence of personal service) for want of jurisdiction of his person. The dismissal was affirmed by the U. S. Court of Appeals. *Block* v. *Block,* 196 F.2d 930, CCA-7, 1952.

Subsequently, on November 12, 1952, Mrs. Block filed an action in equity in the Court of Common Pleas, Hamilton County, Ohio, embodying the above allegations, and secured personal service on Mr. Block.

HOW FEDERAL QUESTION IS PRESENTED

At the close of petitioner's opening statement in the Court of Common Pleas, Hamilton County, Ohio, respondent moved the court for judgment on the pleadings and opening statement, on the ground that under *Article IV, Section I* of the Constitution, the Court was required to give full faith and credit to the Illinois divorce decree and was powerless to render the relief sought, even though the

allegations of fraud in the procurement of said decree be admitted. Four additional grounds for said motion also were advanced. The trial court sustained the motion solely on the ground of full faith and credit, overruled the motion on the other four grounds, and dismissed the cause. The judgment entry read:

> "ON CONSIDERATION WHEREOF, the court finds that in the judgment entered in the Superior Court of Cook County, Illinois, General No. 46S3509, on or about March 12, 1946, in a suit instituted by the plaintiff against defendant, said court had jurisdiction over the parties and the subject matter of said action, and therefore is entitled to full faith and credit in the courts of this state under the provisions of Article IV, Section I of the Constitution of the United States, and Title 28, U. S. C. A., Section 1738, the Act of Congress implementing said Article and Section, and that this Court is without power to reform said decree, for which relief the amended petition prayed."
>
> "The Court further finds that the other grounds of said motion for judgment on the pleadings and on the opening statement are not well taken and to that extent said motion is overruled." (Appendix B, p. 6a.)

On appeal to the Court of Appeals (First Appellate District, State of Ohio), the dismissal on the ground of full faith and credit was assigned as error by Petitioner. Judgment was affirmed, the court holding:

> ". . . On consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment prejudicial to the appellant." (Appendix C, p. 8a.)

An appeal as a matter of right, based upon the Constitutional question of full faith and credit, was thereupon taken to the Supreme Court of Ohio, and a motion to certify filed on the ground of public and great general inter-

est. The Supreme Court dismissed the appeal as a matter of right, holding:

> "It is ordered and adjudged that this appeal as a matter of right be, and the same hereby is, dismissed for the reason that no debatable constitutional question is involved." (Appendix E, p. 10a.)

The Court overruled the motion to certify.

It is clear from the record in this case that the Ohio Courts deemed the federal question to be before them, and actually entertained and decided the cause on that ground alone. The various non-federal grounds put forward by respondent were not decided against petitioner. Under the circumstances it is clear that there is but one question before this Court: the federal question of the proper interpretation of the full faith and credit clause. *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, *International Steel & Iron Co.* v. *National Surety Co.*, 297 U. S. 657. The sufficiency of the lower courts' ground for granting full faith and credit to a sister state decree is one for this Court to determine. *Barber* v. *Barber*, 323 U. S. 77.

REASONS FOR GRANTING THE WRIT

1. The decision of the Trial Court in the instant case, as affirmed by the Court of Appeals and Supreme Court of Ohio without opinion, was based upon the theory that:

> ". . . an existing final judgment and decree of a court of one state cannot be attacked on the ground of fraud in the courts of any other state unless it can be shown that jurisdiction over one of the parties or over the subject matter of the action was obtained by fraud."
>
> "In this case the Illinois Court admittedly had full jurisdiction over the parties and the subject of the action and to grant the relief prayed for would be to

substantially impair the validity of the Illinois decree and would violate the full faith and credit clause of the federal constitution." (Appendix A, p. 4a.)

The principle thus announced is in conflict with the decisions of this Court in *Cole* v. *Cunningham,* 133 U. S. 107, 112, where the Court announced the rule to be:

> "This (the full faith and credit clause) does not prevent an inquiry into the jurisdiction of the Court, in which a judgment is rendered, to pronounce the judgment, nor into the right of the State to exercise authority over the parties or the subject, nor whether the judgment is founded in, and impeachable for, a manifest fraud."

and *Simon* v. *Southern Railway,* 236 U. S. 115, where the Court said at p. 122:

> "For even where there has been process and service, if the Court 'finds that the parties have been guilty of fraud in obtaining a judgment . . . it will deprive them of the benefit of it.' *McDaniel* v. *Traylor,* 196 U. S. 415, 423."

The decisions of the Ohio Courts in the instant case further are contrary to the equitable principles announced in *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.,* 322 U. S. 238, where Mr. Justice Black's opinion (at p. 244) states:

> "From the beginning there has existed alongside the term rule a rule of equity to the effect that under certain circumstances, one of which is after discovered fraud, relief will be granted against judgments regardless of the term of their entry. *Marine Insurance Co.* v. *Hodgson,* 7 Cranch 332; *Marshall* v. *Holmes,* 141 U. S. 589. . . . Out of deference to the deep-rooted policy in favor of the repose of judgments entered during past terms, courts of equity have been cautious

> in exercising their power over such judgments. *United States* v. *Throckmorton,* 98 U. S. 61. But where the occasion has demanded, where enforcement of the judgment is 'manifestly unconscionable,' *Pickford* v. *Talbott,* 225 U. S. 651, 657, they have wielded the power without hesitation."

2. The error into which the Ohio Courts have fallen in this case is symptomatic of the confusion which exists throughout the United States in the application of equitable rules to attacks upon judgments and decrees because of after-discovered fraud. Because of the conflict between the severe test for fraud set forth in *United States* v. *Throckmorton,* 98 U. S. 61, 65, and the more liberal interpretation given in *Marshall* v. *Holmes,* 141 U. S. 589, the various state and federal courts have selected one or the other of the two rules as suited their own philosophy:

> "As for the federal rule itself, it must still remain unsettled. Since the courts are at liberty to cite either line of authorities, and do so as suits their convenience, the only possible answer in spite of repeated assertions that the federal rule is clear, is that there is no federal rule at all. And there will be none until one or the other of the conflicting decisions is overruled."
>
> 21 *Columbia Law Review,* 268-270, as cited in *Publiker* v. *Shallcross,* 106 F.2d 949, CCA-3, 1939.

See also, *Griffith* v. *Bank of New York,* 147 F.2d 899, CCA-2, 1945, at p. 901.

The fraud in the instant case lay in respondent having induced Petitioner to enter into a property settlement agreement by means of false and fraudulent representations as to the control of the property he owned, thus causing her to believe he was unable to respond to her rights in his property to a degree commensurate with his actual wealth; that she did not learn of the falsity of these statements until after the divorce decree had been entered,

and the so-called "irrevocable" trust had been set aside; and that, had she known the truth at the time she executed the property settlement agreement, she would not have accepted its terms.

This factual situation has been before the various state and lower federal courts on innumerable occasions, with irreconcilable diversity of results. Many courts attempt to fit these facts into the "extrinsic"-"intrinsic" rule set down in *United States* v. *Throckmorton,* 98 U. S. 61, the majority of such courts holding that this *does* constitute extrinsic fraud sufficient to sustain an independent attack on the decree (even though the original court had jurisdiction of the person and subject matter). Representative of these cases are: *Taylor* v. *Taylor,* 192 Cal. 71, 218 P. 756, 1923; *Smith* v. *Foto,* 285 Mich. 361, 280 N. W. 790, 1938; *United States Nat. Bank of Denver* v. *Bartges,* 120 Colo. 317, 210 P.2d 600, cert. denied, 338 U. S. 955, sub. op. 224 P.2d 658, pet. for cert. dismissed, 340 U. S. 957; *Milekovich* v. *Quinn,* 40 Cal. App. 537, 181 P. 256, 1916; *Sapp* v. *Superior Court,* 119 Cal. A.2d 64, 260 P.2d 119, 1953.

Another line of cases holds that because of such extrinsic fraud, the original court was *deprived* of jurisdiction over the subject matter of the action and that the judgment or decree was consequently vulnerable on jurisdictional grounds: *Scott* v. *Dilks,* 47 Cal. A.2d 207, 117 P.2d 700, 1944, *Glover* v. *Glover,* ... Utah ..., 242 P.2d 298, 1952.

Still another rule applies in New York, where the New York Courts apparently have decided that the extrinsic fraud must encompass *coercion* and *duress* before relief can be granted; *Cohen* v. *Randall,* 137 F.2d 441, CCA-2, 1943.

Wisconsin and Minnesota, on the other hand, have rejected the "extrinsic-intrinsic" rule entirely (See *Boring* v. *Ott,* 138 Wis. 260, 119 N. W. 865, 1909, and *Hafner* v.

Hafner, 237 Minn. 424, 54 N. W. 2d 854); and have broadened the rule to conform more readily to *Marshall* v. *Holmes,* 141 U. S. 61, stating that equity will remedy a fraud consisting even of intrinsic perjury in the action. See also: *Weber* v. *Weber,* 260 Wis. 420, 51 N. W. 2d 18, 1952, and *Johnson* v. *Johnson,* ... Minn. ..., 68 N. W. 2d 398, 1955.

Judged by the confusion which currently exists among the various states, it is apparent that a defrauded wife can hope only that her fleeing spouse comes to rest in a jurisdiction such as Wisconsin, Minnesota or California—and not New York, nor Ohio—if she is to succeed in unmasking the fraud perpetrated against her in the original divorce action.

This Court has gone far in attempting to bring some measure of order into the chaotic conditions which currently plague all phases of the interstate divorce problem. *Williams* v. *North Carolina,* 325 U. S. 226. Settlement of the question here presented plainly is in the public interest, and is properly a matter upon which this Court should act as final arbiter.

3. The exact factual situation presented in the instant case has never been passed upon by this Court, although such a determination, in cases in which there was a close similarity in facts, has been sought without result:

Griffith v. *Bank of New York,* 147 F.2d 899, C. C. A. 2, cert. denied, 325 U. S. 874.
United States Nat. Bank of Denver v. *Bartges,* 120 Colo. 317, 210 P.2d 600, cert. denied, 338 U. S. 955.
Cohen v. *Randall,* 137 F.2d 441, C. C. A. 2, cert. denied, 320 U. S. 796.

To complicate the situation further, the first two cases established the right to the equitable relief sought, while the last denied it.

In the interest of establishing a more consistent approach to the question of avoidance of divorce decrees incorporating settlement agreements procured by fraud, and to render the full faith and credit clause intelligible when applied to such factual situations, the Court should take this opportunity to decide a case which embodies the very question (unencumbered by extraneous issues), heretofore involved in the dozens of cases which have arisen throughout the country in recent years.

A decision by this Court that misrepresentation and concealment of assets by one spouse which induce the other to enter into an inequitable property settlement agreement, is fraud sufficient to empower a court of equity to interpose its will upon the parties; and that in such situations, the court of equity is not required to give full faith and credit to the original divorce decree, embodying said agreement, would be in accord with prior decisions of this Court, and would remove the distressing uncertainties and conflicts into which lower courts have fallen.

4. A further error of the Ohio Courts which is apparent in this case, and one in which many other courts in the various states have fallen, relative to this issue of the proper application of the full faith and credit clause, was a disregard of the positive pronouncement of this Court in *Halvey* v. *Halvey,* 330 U. S. 610, 1946, where this Court stated:

> "So far as the Full Faith and Credit Clause is concerned, what Florida could do in modifying the Decree, New York may. . . . But a judgment has no constitutional claim to more conclusive or final effect in the State of the forum than it had in the state where rendered. . . . 'Whatever may be the authority of a State to undermine a judgment of a sister state on grounds not cognizable in the state where judgment was rendered (Cf. *Williams* v. *No. Carolina,* 325, 226, 230) it is clear that the state of the forum has at least

> as much leeway to disregard the judgment, to qualify it, or to depart from it as does the state where it was rendered.' "

The Ohio Court disregarded what Illinois had decided would be done under the factual situation presented in the instant case, and contented itself with a recitation of equitable rules which it felt should govern the case. This oversight did not stem from any lack of authority in Illinois on the point, since the Court's attention had been called to the one case decided on this issue in Illinois, namely, *Griswold* v. *Griswold,* 111 Ill. App. 263, 1903, where the Illinois rule was announced to be:

> "Where the consent of the wife, to an amount to be decreed to her as alimony, is coercively obtained by the husband, and through his falsehoods and fraudulent misrepresentations and concealment as to his financial worth and his ability to provide for her, and a decree on consent, so obtained, is entered, there is fraud in the procuring of the decree, and a court of equity has inherent jurisdiction to purge the decree of such fraud and enter a decree awarding to the wife such alimony, as 'from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just.' "
>
> "The decree under all the circumstances was one obtained at his instigation and upon his terms, and was a fraud on her."

By disregarding the manifest power which Illinois courts have over their own judgments and decrees where procured through this type of fraud, the Ohio court gave to the Illinois decree *greater* faith and credit than it would have been given in Illinois. This resulted in a grave miscarriage of justice to Petitioner, denying her the opportunity to litigate the question of the manifest fraud perpetrated upon her in the only court in which she could secure jurisdiction over the person of respondent.

CONCLUSIONS

We submit that the Full Faith and Credit Clause of the United States Constitution has never been interpreted by this Court to preclude the modification of a decree of a sister state when such decree has been procured by a manifestly unconscionable fraud.

Because the Supreme Court of Ohio erroneously considered itself compelled to give full faith and credit to the Illinois decree procured by such fraud, the petition for a writ of certiorari should be granted, and the Supreme Court of Ohio reversed.

Respectfully submitted,

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APPENDIX

APPENDIX A

COURT OF COMMON PLEAS,
HAMILTON COUNTY, OHIO

No. A-135153

VIRGINIA S. BLOCK,

Plaintiff,

v.

LOUIS T. BLOCK,

Defendant.

MEMORANDUM

Hoy, J.:

This case is before the Court upon the motion of the defendant for judgment on the pleadings and the opening statement of counsel for plaintiff.

Briefly summarized, the facts upon which plaintiff's prayer for relief is based are as follows:

That she was married to the defendant at Chicago, Illinois, in 1941 and separated from him in 1945; that shortly after the separation the defendant, for the purpose of placing all of his assets amounting to about one million dollars beyond plaintiff's reach, created a purportedly irrevocable trust with the First National Bank of Cincinnati from which the defendant was to receive the income amounting to $25,000.00 per year during his lifetime and the corpus of which was to be distributed among certain charities after defendant's death; that at the time said trust was created, the defendant was under duress and the trust was, therefore, revocable; that the defendant, knowing that he could revoke the trust at will, fraudulently concealed this fact from plaintiff and her attorneys; that

during the pendency of an action for divorce and alimony brought by plaintiff on February 19, 1946 in the Superior Court of Cook County, Illinois, plaintiff and defendant entered into a separation agreement dated February 27, 1946 by the terms of which plaintiff was to receive $110,000.00 in cash, the household furniture of the parties and certain other benefits in full of all claims for alimony or support in the event a divorce was granted; that at the time she entered into said agreement, plaintiff did not know of defendant's intent at the time of creating said trust to conclude a settlement with her based thereon and afterwards to repossess the trust property free of the trust and that had she been aware of this situation she would not have executed the separation agreement; that defendant filed his answer and appearance in the divorce case and on March 12, 1946 the Superior Court of Cook County, Illinois, granted plaintiff a divorce and awarded her alimony in accordance with the terms of the separation agreement which was approved and incorporated by reference in the decree; that plaintiff has received all property and money due her under the agreement and in accordance with the Court's decree; that in 1950 the defendant brought an action in the Common Pleas Court of Hamilton County, Ohio, against the First National Bank of Cincinnati to set aside the trust agreement on the ground that he was under duress and was not a free agent at the time it was made and upon this ground the agreement was set aside and the corpus of the trust estate refunded to defendant; that plaintiff did not learn of the fraud perpetrated upon her until defendant filed his action to set aside the trust agreement in 1950; that plaintiff thereupon in 1951 filed an action in the Superior Court of Cook County, Illinois, in the nature of a Bill of Review setting forth the foregoing allegations and sought to obtain service by publication upon defendant who was, at that time, a resident of Ohio;

that upon defendant's motion said cause was removed to the United States District Court where defendant's motion to quash service of summons was sustained and plaintiff's motion to remand was overruled; that upon appeal by plaintiff to the United States Circuit Court of Appeals the orders of the District Court were affirmed.

Plaintiff's prayer is that this Court set aside those portions of the decree entered by the Superior Court of Cook County, Illinois, in the divorce case as purport to approve the separation agreement; that said agreement be set aside as having been induced by fraud; and that this Court determine and allow to plaintiff such sum as should have been allowed, taking into account the property and true worth of the defendant at the time the agreement was made.

Defendant's motion to dismiss is based on the following grounds:

1. That plaintiff cannot maintain this action because she has not tendered back to the defendant the consideration received for the settlement agreement which she is attempting to set aside;

2. That the Illinois divorce decree, incorporating the settlement agreement, is entitled to full faith and credit and is conclusive;

3. That this action is a collateral attack upon a judgment and cannot be maintained;

4. That this Court has no authority to vacate, modify or annul the judgment or decree of any other court;

5. That there was no fraud.

In view of the conclusion reached with regard to the second ground of defendant's motion, it will be unnecessary to discuss the other propositions advanced therein.

The Court is in agreement with plaintiff's contention that where one, by extrinsic fraud, prevents his adversary

from defending an action or prevents him from presenting all of his case to the Court so that there was, in fact, no adversary trial or decision of the issues involved, the judgment of a court is open to attack in any court of the state in which such judgment was rendered.

Furthermore, the law seems to be well settled that where jurisdiction over the defendant or over the subject-matter of an action is obtained by extrinsic fraud, the judgment of the Court of a sister state may be attacked in the courts of any other state and that the full faith and credit clause of the federal constitution does not prevent the application of this rule.

However, after a careful consideration of the authorities cited in the especially well written briefs submitted by counsel for each of the parties, this court concludes that an existing final judgment and decree of a court of one state cannot be attacked on the ground of fraud in the courts of any other state unless it can be shown that jurisdiction over one of the parties or over the subject of the action was obtained by fraud.

In this case the Illinois Court admittedly had full jurisdiction over the parties and the subject of the action and to grant the relief prayed for would be to substantially impair the validity of the Illinois decree and would violate the full faith and credit clause of the federal constitution.

Defendant's motion will, therefore, be sustained.

An entry may be submitted in accordance herewith, saving exceptions to plaintiff.

* * * * *

APPEARANCES:

HARMON, COLSTON, GOLDSMITH & HOADLY,
Attorneys for Plaintiff,

PAXTON & SEASONGOOD,
Attorneys for Defendant.

April 13, 1954.

APPENDIX B

COURT OF COMMON PLEAS,
HAMILTON COUNTY, OHIO

No. A-135153

VIRGINIA S. BLOCK,

Plaintiff,

v.

LOUIS T. BLOCK,

Defendant.

JUDGMENT ENTRY

This cause came on to be heard upon the pleadings and the opening statement of counsel for plaintiff, and upon the motion of defendant for judgment on the pleadings and on said opening statement, was argued by counsel and submitted to the court.

ON CONSIDERATION WHEREOF, the court finds that in the judgment entered in the Superior Court of Cook County, Illinois, General No. 43S3509, on or about March 12, 1946, in a suit instituted by the plaintiff against defendant, said court had jurisdiction over the parties and the subject matter of said action, and therefore is entitled to full faith and credit in the courts of this state under the provisions of Article IV, Section I of the Constitution of the United States, and Title 28 U. S. C. A., Section 1738, the Act of Congress implementing said Article and Section, and that this court is without power to reform said decree, for which relief the amended petition prayed.

The court further finds that the other grounds of said motion for judgment on the pleadings and on the opening statement are not well taken and to that extent said motion is overruled.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the within action be dismissed and that the defendant go hence without day and recover his costs from plaintiff in the amount of $..... for which execution may issue. To the granting of said motion for judgment on the pleadings and on the opening statement plaintiff excepts. To the overruling in part of said motion for judgment on the pleadings and on the opening statement defendant excepts.

APPENDIX C

IN THE COURT OF APPEALS,
FIRST APPELLATE DISTRICT OF OHIO,
HAMILTON COUNTY, No. 7908

VIRGINIA S. BLOCK,

Plaintiff-Appellant,

v.

LOUIS T. BLOCK,

Defendant-Appellee.

OPINION

December 20, 1954.

**APPEAL ON QUESTIONS OF LAW,
FROM COURT OF COMMON PLEAS,
HAMILTON COUNTY, OHIO**

MESSRS. HARMON, COLSTON, GOLDSMITH, & HOADLY, MR. HENRY B. STREET, MR. DOUGLAS G. COLE, and MR. GEORGE H. PALMER, *for Plaintiff-Appellant,*

MESSRS. PAXTON & SEASONGOOD, MR. MURRAY SEASONGOOD, MR. ROBERT P. GOLDMAN, MR. REUVEN J. KATZ, and MR. A. BRUCE SCHIMBERG, *for Defendant-Appellee.*

By the Court.

An examination of the record discloses no error, prejudicial to appellant. The judgment of the Court of Common Pleas of Hamilton County is, therefore, affirmed.

MATTHEWS, P. J., & HILDEBRANT, J., Concur.

APPENDIX D

(Entered of Record 12/24/54)

COURT OF APPEALS
FOR THE FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

No. 7908

VIRGINIA S. BLOCK,

Plaintiff-Appellant,

v.

LOUIS T. BLOCK,

Defendant-Appellee.

JUDGMENT OF AFFIRMANCE

This cause came on for hearing upon the appeal on questions of law, assignments of error, bill of exceptions, the transcript and the original papers and pleadings from the Court of Common Pleas of Hamilton County, Ohio, and was argued by counsel, on consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment prejudicial to the appellant.

It is, therefore, considered by the Court that the judgment of the Court of Common Pleas be, and the same is thereby affirmed, and that the appellee recover from the appellant, her costs herein expended, taxed at $.....

.....

And the Court being of the opinion that there was reasonable ground for this appeal, allow no penalty.

It is further ordered that a special mandate be sent to the Common Pleas Court of Hamilton County, Ohio, for execution upon this judgment.

To all of which appellant, by her counsel excepts.

APPENDIX E

IN THE
SUPREME COURT OF OHIO

No. 34338

BLOCK,

Appellant,

v.

BLOCK,

Appellee.

Supreme Court—Dismissal—No debatable constitutional question involved—Divorce decree obtained in sister state—Incorporation of property settlement—Authority to examine and alter foreign decree—Section 1, Article IV, U. S. Constitution—Full faith and credit—Equitable relief—Collateral attack on foreign judgment for fraud—Foreign court having jurisdiction of parties and subject matter.

(No. 34338—Decided April 13, 1955.)

APPEAL from the Court of Appeals for Hamilton County.

Messrs. Harmon, Colston, Goldsmith & Hoadly, Mr. Henry B. Street, Mr. Douglas G. Cole and Mr. George H. Palmer, for appellant.

Messrs. Paxton & Seasongood, Mr. Robert P. Goldman, Mr. Reuven J. Katz and Mr. A. Bruce Schimberg, for appellee.

It is ordered and adjudged that this appeal as of right be, and the same hereby is, dismissed for the reason that no debatable constitutional question is involved.

Appeal dismissed.

WEYGANDT, C. J., MATTHIAS, HART, STEWART, BELL and TAFT, JJ., concur.